IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.372 OF 2004

1. Shri Daji Dhondiba Sawant & Ors. .. Appellants

Versus

Smt. Subhadra Laxman Sawant & Ors. .. Respondents

Mr.A.S.Desai for appellants

Mr.G.N.Salunke for respondents

CORAM : P.V.KAKADE, J.

DATE : 10TH JUNE, 2005.

P.C.:

1. The appellants have preferred this appeal against the judgment and order passed by Addl. District Judge, Gadhinglaj dismissing their appeal and confirming the order passed by Civil Judge, Junior Division, Chandgad dismissing the suit of the plaintiffs.

2. I have heard the learned counsel for both the

parties. Perused the record.

3. The plaintiffs have filed the suit for seeking relief of perpetual injunction in respect of the suit lands of Gat No.26 and 31 located at village Ibrahimpur, Tal. Chandgad,. The main issue involved in the dispute was that the plaintiffs came with the case that the suit properties were ancestral and were joint family properties and plaintiffs were in actual possession and common enjoyment of suit lands. It was further alleged that the defendant no.2 was obstructing their possession and hence the suit for perpetual injunction simplicitor came to be filed. The learned trial judge on hearing both the sides and recording the evidence came to the conclusion that the lands were proved to be ancestral properties those were not under joint family properties of defendant no.1 and the plaintiffs have also failed to prove that there was any obstruction by defendant no.2 and as such the suit for injunction simplicitor came to be dismissed. The appeal was preferred against the said order to the Court of Addl. District Judge and after hearing both the sides dismissed the appeal. Hence the present appeal.

4. The only point sought to be raised on behalf of the appellant was that the properties which were said to be alienated by the defendants were not obtained permission of the Collector, which was contemplated under the provisions of Bombay Prevention and Consolidation of Holdings Act. However, it is revealed that necessary permission was sought for and obtained and as such there is no legal bar in alienation of the properties in question. There is no other substantial question of law involved in this appeal. Moreover both the courts below are seen to have appreciated the available evidence on record, which is question of issue of facts. The findings recorded by both the courts below are found to be just, legal and proper and therefore, it would brook no interference by this court.

5. In the result the appeal stands dismissed.

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